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Approved: Jacob Lillywhite / Alison Moe
Assistant United States Attorneys

Before: THE HONORABLE KEVIN N. FOX
United States Magistrate Judge
Southern District of New York

UNITED STATES OF AMERICA

- v. -

EDWIN CABAN,

Defendant.

SEALED COMPLAINT

Violations of
18 U.S.C. §§ 242,
1001, and 2

COUNTY OF OFFENSE:
MANHATTAN

SOUTHERN DISTRICT OF NEW YORK, ss.:

STEPHEN ANEST, being duly sworn, deposes and says that he is a Special Agent with the Federal Protective Service ("FPS"), and charges as follows:

COUNT ONE

(Deprivation of Rights Under Color of Law)

1. On or about June 22, 2016, in the Southern District of New York, EDWIN CABAN, the defendant, under color of a law, statute, ordinance, regulation, and custom, willfully subjected a person in a State, to wit, the State of New York, to the deprivation of a right, privilege, and immunity secured and protected by the Constitution and laws of the United States, to wit, the right to be free from excessive use of force, which deprivation resulted in bodily injury to a person, to wit, while working as a security guard for a contractor of the Federal Protective Service at a branch of the Social Security Administration located in Manhattan, New York, CABAN willfully punched a man ("Victim-1") multiple times in the chest and ribs, causing bodily injury to Victim-1.

(Title 18, United States Code, Sections 242 and 2.)

COUNT TWO

(Filing False Report and Making False Statements)

2. From at least on or about June 22, 2016, up to and including at least in or about December 6, 2016, in the Southern District of New York and elsewhere, EDWIN CABAN, the defendant, in a matter within the jurisdiction of the executive branch of the Government of the United States, knowingly and willfully, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of a department and agency of the United States, did falsify, conceal, cover up, make a false entry in a document, and make materially false, fictitious, and fraudulent statements and representations, to wit, CABAN (1) made a false report by telephone to FPS, (2) falsified a "Security Incident Report," (3) wrote and signed a false affidavit, and (4) made false statements to FPS agents during an interview, all concerning his altercation with Victim-1 and with the intent to impede the resulting investigation, which investigation falls within the jurisdiction of the Federal Protective Service.

(Title 18, United States Code, Sections 1001 and 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

3. I am a Special Agent with the FPS and have been employed by the FPS since 2009. I have participated in the investigation of this matter. I am familiar with the information contained in this affidavit based on my own personal participation in the investigation, my review of documents and recordings, and conversations that I have had with other law enforcement agents and other individuals. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents, and the actions and statements of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

Overview

4. Based on the sources described herein, there is probable cause to believe that on or about June 22, 2016, an

individual ("Victim-1") was assaulted by Protective Security Officer EDWIN CABAN, the defendant, at a branch of the Social Security Administration ("SSA") located in Manhattan. At the time of the assault, Victim-1 posed no danger to CABAN or any other person in the SSA office. Specifically, as captured by SSA security cameras, while Victim 1 had his hands up, CABAN pushed Victim-1 over a desk, knocking over a computer monitor. CABAN then grabbed Victim-1, pulled him into the elevator bank, pushed him against a wall, and held him against the wall by pressing a hand to the base of Victim-1's throat. At this point, Victim-1's hands were both in the air, in a gesture of surrender. While Victim-1 was restrained in this manner, CABAN punched Victim-1 in the chest and ribs four times. CABAN's partner, another protective security guard ("PSO-1"), then arrived. As PSO-1 stood next to CABAN and Victim-1, CABAN punched Victim-1 a fifth time. As a result of the attack, Victim-1 suffered bodily injuries, including fractured ribs, bruising, and physical pain.

5. Additionally, based on the sources described herein, there is probable cause to believe that, following the assault of Victim-1, EDWIN CABAN, the defendant, sought to cover up the assault to conceal the fact that he punched Victim-1. In particular, and among other things:

a. Officers from the New York City Police Department ("NYPD") responded to a 911 call from Victim-1 reporting that he had been assaulted by a security guard. When questioned by an NYPD officer ("Officer-1") about the incident, CABAN told Officer-1 that he put his hands on Victim-1 to escort him out of the building, that Victim-1 then "flopped" onto the desk, and that CABAN did not touch Victim-1 thereafter or enter the elevator bank with him.

b. CABAN made a telephone call to an FPS reporting center after the incident, and CABAN omitted any use of force against Victim-1 from his oral report.

c. CABAN discussed the incident with PSO-1 prior to PSO-1 completing a "Security Incident Report," and then asked PSO-1 for a copy of PSO-1's "Security Incident Report," which PSO-1 provided to him. That report did not disclose that CABAN struck Victim-1.

d. CABAN (1) falsely reported on his own "Security Incident Report" that Victim-1 threw himself over a desk, when in fact CABAN pushed Victim-1 over the desk, and (2) set forth a detailed account of his physical contact with Victim-1 that omitted CABAN's punches to Victim-1.

e. I and another law enforcement officer interviewed CABAN on two occasions. Both in his oral statements and in a hand-written affidavit CABAN signed during the course of the first interview, CABAN falsely stated that Victim-1 threw himself over the desk, that Victim-1 was resisting detention when CABAN struck him, that CABAN did not talk with PSO-1 about the incident, and that CABAN did not see PSO-1's incident report.

Background

6. Based on my training and experience; my interviews with witnesses, including Victim-1; my review of documents, including records provided by the SSA, the NYPD, and the FPS; my visit to, and review of surveillance video from an SSA branch office; and discussions with SSA, FPS, and NYPD personnel, I have learned the following about the locations and individuals involved in the assault on Victim-1:

The Scene of the Assault

a. The SSA has multiple branch offices located throughout New York City, where claimants may request SSA services and make inquiries regarding Social Security benefits and Social Security cards.

b. One such branch office is located at 123 Williams Street (the "123 Williams Office"); in Manhattan. On the third floor of the building, an elevator bank leads to a large room with a security guard desk on the right (as one enters from the elevator bank), electronic terminals on the left, a waiting area straight ahead, and windows staffed by SSA representatives straight ahead and down a hall to the left. The third floor of the building is staffed by two Protective Security Officers, who are employees of a contractor for the Federal Protective Service of the United States Department of Homeland Security.

c. There are surveillance cameras throughout the third floor of the 123 Williams Office, including in the elevator banks.

The Victim

d. On June 22, 2016, Victim-1 went to the 123 Williams Office with an elderly man in a wheelchair. Victim-1 was escorting the elderly man to the 123 Williams Office in order to assist him in obtaining a new social security card.

The Defendant

e. EDWIN CABAN, the defendant, previously worked as a correction officer for the New York City Department of Correction. In 2011, CABAN began working for an FPS contractor as a Protective Security Officer ("PSO"), and he is no longer working as an FPS PSO. In June 2016, CABAN was assigned to the 123 Williams Office. On the afternoon of June 22, 2016, CABAN was working on the third floor of the 123 Williams Office, together with PSO-1, his regular partner.

The Assault of Victim-1

7. I have reviewed video footage from June 22, 2016 captured by three security cameras installed on the third floor of the 123 Williams Office ("Camera-1," "Camera-2," and "Camera-3"). The video surveillance does not contain audio. From my review of the video, I have learned the following:

a. As reflected on the video captured by Camera-1, at approximately 12:37 p.m., Victim-1 entered the third floor of the 123 Williams Office, wheeling an elderly individual in a wheelchair into the reception area of the floor. Victim-1 approached a terminal to enter the queue for service from an SSA representative.

b. As Victim-1 stood at the terminal, EDWIN CABAN, the defendant, approached Victim-1, and they exchanged words. As CABAN stepped away, Victim-1 withdrew a cellphone from his pocket. CABAN then returned, spoke to Victim-1, and placed a hand on the elderly man's wheelchair. CABAN and Victim-1 again exchanged words, and CABAN reached in the direction of Victim-1's abdomen. Victim-1 then put both of his hands up in the air,

with his palms facing CABAN. CABAN subsequently took hold of Victim-1's waist with both hands.

c. After taking hold of Victim-1, CABAN pivoted, turned Victim-1 around, and pushed Victim-1, forcing him to step backward toward the elevator bank. CABAN continued to push Victim-1 backward, toward a desk adjacent to the opening to the elevator bank, until Victim-1 fell backward over the desk. CABAN then took hold of Victim-1's arms, and, as Victim-1 struggled to escape from CABAN's hold, CABAN took Victim-1 into the elevator bank.

d. As reflected on Camera-2, after a brief struggle in the elevator bank, CABAN pushed Victim-1 up against a wall. Placing his left hand at the base of Victim-1's throat, CABAN pinned Victim-1 against the wall. As Victim-1 stood immobile, with his hands up in the air in a gesture of surrender, CABAN punched Victim-1 four times in the chest and ribs.

e. As a result of the punches from CABAN, Victim-1 collapsed forward. CABAN continued to hold on to Victim-1 as Victim-1 remained bent forward, clutching his abdomen.

f. At this point, as reflected on Camera-2 and Camera-3, PSO-1 arrived in the elevator bank from a back area of the SSA office and approached CABAN and Victim-1. CABAN let go of Victim-1, who remained against the wall, not moving. As PSO-1 stood near Victim-1, CABAN punched Victim-1 again in the chest. After several minutes passed, CABAN and PSO-1 escorted Victim-1 out of the elevator bank and into the main reception area, back toward where the individual in the wheelchair had remained during the assault.

8. I have interviewed Victim-1, and from that interview, I have learned the following:

a. On June 22, 2016, Victim-1 took his friend—an elderly man who uses a wheelchair—to the 123 Williams Office.

b. CABAN attempted to move the wheelchair of Victim-1's elderly friend, and Victim-1 asked CABAN not to do so. After that discussion, Victim-1 removed his cellphone from

his pocket, and thereafter, CABAN repeatedly accused Victim-1 of taking a picture with his cellphone, which Victim-1 denied. CABAN then grabbed Victim-1 and caused him to fall over a desk.

c. CABAN then pushed Victim-1 against the wall in the elevator bank, holding him by the throat, and punched Victim-1 repeatedly in the chest and ribs. While he did so, Victim-1 pleaded with him to stop. Victim-1 reported extreme pain and difficulty breathing as a result of the punches from CABAN.

d. After he finished punching Victim-1, CABAN appeared to soften his demeanor. CABAN thereafter moved Victim-1 and his elderly friend to the front of the queue for service. CABAN shook Victim-1's hand and escorted Victim-1 and his friend to a window at which they received service from an SSA representative.

e. Victim-1 and his friend then exited the building, at which time Victim-1 called 911.

f. Two NYPD police officers arrived and spoke with Victim-1. One officer entered the 123 Williams Office. Thereafter, the officers informed Victim-1 that the PSOs had told them that Victim-1 had been ejected for being unruly and that he was not permitted near the building.

g. Victim-1 went to a hospital to seek medical attention for his injuries, and experienced significant pain from, among other things, bruising and broken ribs resulting from CABAN's assault.

h. Victim-1 reported he still needed to help his elderly friend receive additional services from the SSA, but that he was afraid to return to the 123 Williams Office.

9. I have reviewed a recording of a 911 call placed by Victim-1 from outside the 123 Williams Office. On the call, Victim-1 reports, in sum and substance, that a security guard had pushed him on a desk, grabbed him by the neck, taken him into a hallway, and punched him in the chest and in the ribs.

10. I have reviewed medical records for Victim-1 and learned that Victim-1 suffered significant bruising on his

abdomen, and that x-rays ultimately revealed that Victim-1 fractured several ribs.

The Cover-Up of the Assault on Victim-1

11. I have interviewed PSO-1. In the course of that interview, PSO-1 hand-wrote and signed an affidavit. From that interview and affidavit, I have learned that when PSO-1 came upon EDWIN CABAN, the defendant, and Victim-1 in the elevator bank, CABAN told PSO-1 that Victim-1 had knocked over a computer monitor on the desk. PSO-1 told CABAN that he believed that Victim-1 should be detained and FPS should be called to address the situation, but that CABAN refused to do so.

12. I have interviewed the two NYPD police officers who responded to Victim-1's 911 call reporting an assault. From those interviews, I have learned the following:

a. On the afternoon of June 22, 2016, Officer-1 spoke with Victim-1 outside the 123 Williams Office. Victim-1 told Officer-1 that a security guard had punched him in the elevator bank inside the 123 Williams Office.

b. Officer-1 entered the 123 Williams Office and spoke with EDWIN CABAN, the defendant. CABAN stated to Officer-1, "I'm a retired MOS from the job," and asked to speak with Officer-1 in the elevator bank. The abbreviation "MOS" stands for "member of service," and Officer-1 understood CABAN's statement to mean that CABAN was a retired New York City Police officer.

c. CABAN then described to Officer-1 a dispute involving the moving Victim-1's elderly friend and taking a cellphone picture. CABAN told Officer-1 that he then put his hands on Victim-1 to remove him, at which time Victim-1 "flopped" onto the desk, knocking things over. CABAN stated to Officer-1 that he did not touch Victim-1 after that.

d. When Officer-1 asked CABAN if he entered the elevator bank during the incident, CABAN denied it.

e. CABAN told Officer-1 that he suspected Victim-1 was engaged in fraud with the elderly man.

f. CABAN asked Officer-1 to inform Victim-1 that Victim-1 was barred from returning to the 123 Williams Office.

13. I have reviewed the "Security Incident Report" written by PSO-1, dated June 22, 2016. In that report, the only reference to use of force is PSO-1's note that CABAN was "attempting to detain [Victim-1]" when PSO-1 arrived in the elevator bank. PSO-1 did not state in that report that CABAN struck Victim-1 in his presence, as reflected on the security footage.

14. From my interview with PSO-1 and from reading PSO-1's hand-written affidavit, I have learned that after the incident, CABAN and PSO-1 discussed the assault on Victim-1, and further that, after PSO-1 submitted his Security Incident Report, CABAN asked PSO-1 to show it to him, which PSO-1 did.

CABAN's Statements in Furtherance of the Cover-Up

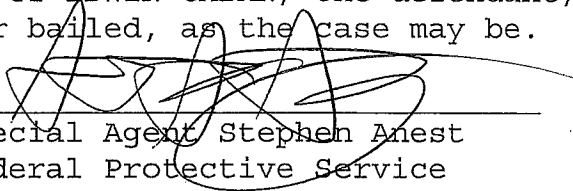
15. I have reviewed a recording of a telephone call made by EDWIN CABAN, the defendant, to an FPS reporting center on June 22, 2016, in which CABAN made an oral report concerning the incident. In that oral report, CABAN stated that there was "a disruptive client in here that needed to be escorted out." CABAN did not disclose that he punched Victim-1.

16. I have reviewed the "Security Incident Report" written by EDWIN CABAN, the defendant, which is dated June 22, 2016. In that report, CABAN states that, as he "attempted to guide [Victim-1] out" of the office, Victim-1 "yelled and jumped onto the security desk flailing [sic] arms and legs knocking equipment around." CABAN then states that he placed Victim-1 in an "arm bar" and "took him by the elevator banks," that Victim-1 "tried to break [his] hold" at which point CABAN "grabbed him under his chin" and "mainta[ined] a hold of his arm." CABAN states that PSO-1 then arrived. CABAN reports no other use of force against Victim-1. In particular, nowhere in the report does CABAN state that he punched Victim-1 multiple times.

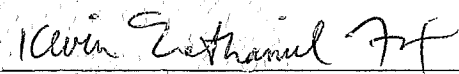
17. I and another law enforcement officer interviewed EDWIN CABAN, the defendant, on two occasions, on July 26, 2016, and December 6, 2016. During the course of the first interview, CABAN hand-wrote and signed an affidavit. In those interviews and in that affidavit, CABAN denied that he spoke with PSO-1

about the incident after it occurred and denied seeing PSO-1's report. In addition, CABAN also falsely stated that Victim-1 threw himself over the desk, when in fact CABAN pushed Victim-1 over the desk, and that Victim-1 was resisting detention when CABAN struck him, when in fact, as reflected in the security video, Victim-1 was not resisting at that time.

WHEREFORE, deponent respectfully requests that a warrant be issued for the arrest of EDWIN CABAN, the defendant, and that he may be imprisoned, or bailed, as the case may be.


Special Agent Stephen Anest
Federal Protective Service

Sworn to before me this
24 day of April, 2017


THE HONORABLE KEVIN N. FOX
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK